

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL NO. 356 OF 1984****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

4 Whether this case involves a substantial question of
law as to the interpretation of the Constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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CHANDRAKANTA WD/O. ANANDILAL**BAPULAL & ORS. - Appellant(s)****Versus****PATEL ABHESING KANJIBHAI & ORS. - Respondent(s)**

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Appearance :

Shri D.F. Amin for Appellant(s) : 1 - 5.

None for Respondent(s) : 1 & 2.

Shri Vibhuti Nanavati for Respondent(s) : 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG**Date : 24/07/2007****ORAL JUDGMENT**

Shri Bharat T. Rao, learned Counsel for respondent No.1,

has filed Leave Note, but, in view of the Gujarat High Court Rules, 1993, I hold that the leave sanctioned by the Court would not be available to the Counsel if his case is a fixed date case, Special Civil Application, Criminal Case or matter on Daily Board. Rule 132(ii) of the Gujarat High Court Rules, 1993 clearly provides that in respect of the matters which are on the Daily Board, the Leave Note would not apply. I, therefore, reject the Leave Note and proceed to hear the parties.

2. The appellants-claimants, Chandrakanta and four others, being partly aggrieved by the award dated 30th March, 1983 passed by the learned Motor Accident Claims Tribunal (A), Panchmahals at Godhra in M.A.C.P. No.52 of 1982, is before this Court with a submission that the award needs modification.

3. As the respondents have not filed any cross objections, nor have challenged the findings recorded against their interest, I am not required to consider their defences in detail, but, however, I will refer to the facts for proper appreciation of the case.

4. The deceased – Anandilal and his son – Raju were travelling on a motor cycle, they were going from Bhabhara to Dohad. The

deceased Aandilal was riding the motor cycle, while his son was sitting as a pillion rider. When they were crossing the road junction between Gulbara to Garbada and Dohad to Alirajpur, a tanker bearing Registration No. GTB-7102 driven by respondent No.1 came from Gulbar side; according to the allegation, it was rash and negligent and was at an excessive speed, it hit the motorcycle from the front, as a result of which, the motorcycle was thrown away and both the passengers died. The defence of the driver and others was that the driver of the motor cycle was rash and negligent, he had hit the tanker on the rear left side and at the time of the accident, the tanker had crossed half of the road and under the circumstances, the driver of the tanker could not be held liable. The parties joined the issue, therefore, the learned Tribunal below recorded the evidence and after providing an opportunity of hearing held that the driver of the motorcycle and the driver of the tanker were each negligent to the extent of 50%. It held that the income of the deceased was Rs.12,500/- per year, but, his prospective income could be Rs.22,000/- per year, however, it also held that the reasonable prospective income would be Rs.18,000/- per year. After deducting a sum of Rs.6,000/- towards personal expenses of the deceased Anandilal, the learned Tribunal held the family dependency to be Rs.12,000/-. The learned Tribunal below has applied the multiplier of 15 (fifteen) and made certain other awards in favour of the claimants.

5. Shri D.F. Amin, learned Counsel for the appellants, after taking me through the evidence and the findings recorded by the learned Tribunal below, submitted that the learned Tribunal below was unjustified in holding the driver of the motorcycle rash and negligent to the extent of 50% . He submitted that the motorcycle was thrown away, but, the driver of the tanker did not stop and crushed the riders of the motorcycle. Therefore, the driver of the tanker was 100% liable. He also submitted that if the future prospective income could be Rs.22,000/- per year, then, there was no reason for the learned Tribunal below to hold that the reasonable income could be Rs.18,000/- per year. He also submitted that the deductions of Rs.6,000/- towards personal expenses of the deceased was unjust in view of the fact that the deceased was required to maintain the family of five persons and was also to look after his own self.

6. Shri Vibhuti Nanavati, learned Counsel for the Insurance Company (respondent No.3), submitted that though the learned Tribunal below has not given any reason to reduce the prospective income from Rs.22,000/- to Rs.18,000/- per year, but, it was also unjustified in applying the multiplier of 15 (fifteen). According to him, the multiplier of 12 (twelve) would have been apt and if recalculations are made, then,

Rs.1,85,500/- would appear to be reasonable amount towards compensation.

7. From the evidence available on the record, especially, *panchnama* of the eye witnesses, it would clearly appear that the accident had taken place on the center of the road junction, the truck had no accident marks either on the front bumper or near the headlights or near the mud-guards of the front left wheel, marks are available more near to the left rear wheel, certain hair and body flesh was found under the shaft/connecting rod of the chasis of the truck. It would also appear from the witness account that he could not see that how the accident took place, but, according to him, immediately after hearing the sound, he found that the accident had already taken place. On the strength of the evidence available on the record, it cannot be said that the motorcycle was hit from the front side of the tanker or from the left front of the tanker. The *panchnama* would clearly show that the motorcycle had hit with the tanker somewhere after the cabin and between the rear tyres. The learned Tribunal below, under the circumstances, was certainly justified in finding that the driver of each of the vehicles was negligent. It did not commit any wrong in finding that the driver of the motorcycle was negligent to the extent of 50%.

8. So far as dependency of the family is concerned, I must hold that the learned Tribunal below was unjustified in holding the dependency to be Rs.12,000/- per year. After going through the finding that the deceased could have earned Rs.22,000/- per year, I must hold that the dependency could be Rs.15,000/- per year, i. e. an amount of Rs.3,000/- more than what has been held by the learned Tribunal below. Applying the multiplier of 15 (fifteen), I hold that in addition to what had been awarded to the claimants by the learned Tribunal below, they would be entitled to a sum of Rs.45,000/-, but, in view of the findings relating to contributory negligence recorded by the learned Tribunal below, the entitlement of the claimants would be to Rs.22,500/- only with 6% interest per annum from the date of the application till the date of realisation. However, the liability of the Insurance Company would be limited to Rs.50,000/- only.

9. The appeal to the extent indicated above is allowed. No costs.

[R.S.Garg, J.]

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